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The engagement of persons answering these advertisements must be made through a Local Office of the Ministry of Labour or a Scheduled Employment Agency if the applicant is a man aged 18-64 or a woman aged 18-59 inclusive unless he or she, or the employment, is excepted from the provisions of the Notification of Vacancies Order, 1952. Note : Barristers, Solicitors, Local Government Officers, who are engaged in a professional, administrative or executive capacity, Police Officers and Social Workers are excepted from the provisions of the Order.

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APPLICATIONS are invited for the appointment of a whole-time male Probation Officer for the Glossop, Chapel-en-le-Frith, Buxton and Bakewell Petty Sessional Divisions.

The appointment and salary will be in accordance with the Probation Rules. The officer will be required to provide a motor car for which an allowance will be made, and to undergo a medical examination.

Applications, on forms obtainable from the undersigned, must be received not later than November 17, 1954.

D. G. GILMAN,
Secretary to the Derbyshire Area Probation Committee.
County Offices, Derby.

NORFOLK COUNTY COUNCIL

JUNIOR ASSISTANT SOLICITOR required in the Department of the Clerk of the Council. Applicants should have a good general experience of conveyancing and should be prepared to undertake occasional advocacy. National Conditions of Service and salary scales apply. Applications to be submitted by November 12, 1954. Application forms and further details are obtainable from the Clerk to the Norfolk County Council, County Offices, Thorpe Road, Norwich.

COUNTY OF STAFFORD

Appointment of Assistant Chief Constable

THE Standing Joint Committee of Staffordshire invite applications for the above appointment.

The appointment will be subject to the Police Regulations for the time being in force and the successful candidate will be required to reside within a reasonable distance of Stafford.

The salary upon appointment will be £1,350 per annum, rising by annual increments of £50 to £1,500 per annum, together with allowances for rent, uniform, travelling, lodging and subsistence.

Forms of application can be obtained from me, the undersigned, on request.

Applications, setting out the names of three referees, must reach me not later than first post on Monday, November 15, 1954, at the County Buildings, Stafford.

Canvassing in any form will be a disqualification.

Dated this twenty-sixth day of October, 1954.

T. H. EVANS,
Clerk of the Standing Joint Committee.
County Buildings,
Stafford.

COUNTY OF SALOP

ASSISTANT SOLICITOR required. Commencing salary up to £750 p.a. according to experience. This is a junior appointment and is open to recently qualified applicants who will have an opportunity of gaining experience in advocacy, conveyancing and Committee work. Applications with full particulars and the names of two referees not later than November 13, 1954.

G. C. GODBER,
Clerk of the County Council.
Shirehall,
Shrewsbury.
October 25, 1954.

BOROUGH OF BRIDLINGTON

APPLICATIONS are invited for post of ASSISTANT SOLICITOR. Salary A.P.T. VI/VII (£695—£810 p.a.) according to extent of qualified service. Applications, with names and addresses of two referees, must reach the undersigned not later than November 15, 1954. Housing accommodation will be available if required. Canvassing will disqualify.

S. BRIGGS,

Town Clerk.

Town Hall,
Bridlington.
October 25, 1954.

BOROUGH OF BOSTON

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APPLICATIONS are invited for the appointment of Legal Assistant (unadmitted) in the Town Clerk's Department, at a salary in Grade A.P.T. III or IV (£550—£625) (Grade II £560—£640) on 1st January, 1955. Housing accommodation available.

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[ESTABLISHED 1837.]

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NOTES of the WEEK

Crime and Cruelty

In allowing the appeal of a husband against a decree which was granted on account of alleged cruelty by criminal activities of the husband, the Court of Appeal did not decide that in no circumstances could persistence in crime constitute matrimonial cruelty (*see Warburton v. Warburton*, referred to at 117 J.P.N. 474).

Mr. Commissioner Latey, Q.C., in *Woollard v. Woollard* (*The Times*, October 13) observed that the decision in *Warburton v. Warburton* did not completely shut the door to a finding of cruelty in a case like the one then before him. He granted the wife a decree of divorce on the ground of cruelty. It was alleged that the conduct of the husband who had been several times convicted and had deceived his wife about his activities had injured her health. The learned Commissioner having referred to the decision in *Jamieson v. Jamieson* [1952] 1 All E.R. 875, said that in the present case the circumstances in which the husband had indulged since the marriage in criminal activities, which had resulted in three convictions, the justifiable remonstrances of the wife, which had been met with unjustifiable resentment on the part of the husband, and the husband's failure to fulfil in 1951 a promise to reform, had injured the wife's health.

In *Warburton v. Warburton*, *supra*, both Jenkins, L.J., and Hodson, L.J., stated they would not lay down any principal that in no circumstances could criminal conduct on the part of a husband amount to cruelty.

Protection of Poultry

The Dogs (Protection of Livestock) Act, 1953, provides for penalties upon the owners of dogs and persons in charge of dogs which worry livestock on agricultural land. Livestock, by definition, includes poultry. The definition of agricultural land is "land used as arable, meadow or grazing land, or for the purposes of poultry farming, pig farming, market gardens, allotments, nursery grounds, or orchards."

Bath magistrates recently dismissed a prosecution under the Act following a submission by the defence that the Act did not cover poultry kept in a back garden of a house used as a nursing home. It will be observed that the definition includes poultry farming, but not poultry keeping of every kind. *The Western Daily Press*, reporting this case, states that Mr. Albert Marshall, the clerk to the justices, was asked by the chairman to give his opinion, and evidently the opinion was stated in open court, and was to the effect that the submission of the defence was correct.

Mr. Marshall had shown in his presidential address at the annual conference of the Justices' Clerks Society to which we referred at p. 446 that, far from wishing to accompany the justices into the retiring room whenever they needed advice, he was quite prepared whenever a point of law arose in court to give his advice openly in court rather than in secret, so that the parties themselves knew the basis on which the court acted.

There must be occasions upon which justices wish to retire with their clerk and ask for explanations of the law in some detail, which they would not wish to discuss in public. Where, however, there is a definite point of law to be decided it may, as Mr. Marshall said, be of advantage to the parties to know exactly what advice the clerk has given. Advocates would often like to know how the clerk has explained the law, and it might sometimes happen that, with the leave of the court, an advocate might put forward some point for consideration which the advice of the clerk had not covered.

The Grant of a Summons

The Divisional Court, on October 13, granted an order of *mandamus* against Nuneaton justices who had refused to issue a summons for careless driving, apparently because the justices had made a settled practice under which any driving charge must in the first place, unless there were exceptional circumstances, be a dangerous driving charge, leaving it to the justices to decide whether it was a proper case for them to direct that the proceedings should continue on a charge of careless driving.

The Lord Chief Justice, in the course of his judgment, said that for magistrates, when asked for a summons, to say that the police must take out a summons for a more serious charge, might prejudice the matter. It must be for the police to decide what charge they prefer.

The principle of this case is of general application. Although justices have undoubtedly a discretion to grant or to refuse process so long as they exercise that discretion judicially (*see R. v. Bros* (1901) 66 J.P. 54 for example) it is for the prosecutor or complainant to prefer the charge or complaint which he is prepared to substantiate. Naturally, there are instances where an unrepresented applicant may ask for a summons for the wrong offence or for the wrong kind of order through ignorance of the law, and in such cases it is proper for the magistrate to explain what should apparently be the nature of the application. The police are not in this position, they know what evidence they can

adduce and can generally decide correctly on the form of the charge. We see no reason why a magistrate should not ask for a brief statement about a driving offence, and possibly ask whether the facts have been fully considered before granting process, but that is very different from refusing to grant a summons in respect of a lesser offence and deciding that it ought to be for a more serious offence. The police could decline to lay information for that graver offence, and justices could not order them to prosecute, *cf. R. v. Mayor of Exeter* (1881) 45 J.P. 158.

In the Nuneaton case Lord Goddard observed if it were found that the police were not preferring charges of dangerous driving where the evidence showed that there was dangerous driving, then the attention of the chief constable should be drawn to it.

Speed Limits

We read that at the annual meeting of the Magistrates' Association at Blackpool recently there was a lively discussion provoked by a suggestion by Mr. Sixsmith, the Cardiff stipendiary magistrate, that speed limits should be abolished. He is reported to have argued that the existing limits were not properly enforced and that, so far as road safety is concerned, it is doubtful whether the abolition of the speed limits would produce any more casualties than are now recorded. He suggested that if all speed culprits were caught it was obvious that the number of cases prosecuted would be nearer one million than the 95,000 at present dealt with. In his experience private motorists habitually disregard the 30 miles per hour speed limit in built-up areas, and heavy vehicle drivers even more flagrantly disregard the 20 miles per hour limit imposed on their vehicles. He is stated to have said that it is notorious that trade unions refused to allow speed limits to be altered because with work schedules based on a limit of 20 miles per hour, drivers who habitually drive in excess of that speed complete their journeys in less time than that allowed, and have spare the time they so save. We have no information on this point, but we should not like to have to accept that official trade union policy on the point is influenced by such a consideration, however much it might appeal to some individual drivers.

Sir Leonard Costello is reported to have opposed the abolition of speed limits on the ground that their removal would merely encourage speed merchants and road hogs. He thought that fines for speeding offences should be increased, with magistrates having more in mind the maximum fine of £20 than "nominal" amounts of £1 or so.

We sympathize with the point of view that a law which is not, and possibly cannot, be fairly strictly enforced is not a very satisfactory one. It tends to induce in many people affected by it a state of mind that breaking the law is a matter of small account, and that if one is unlucky enough to be caught it is just too bad. We fear that this is the state of mind of many motorists so far as speed limits are concerned, and we would suggest that to the skilled and careful motorist speed limits are unnecessary because he makes his own limits according to the circumstances existing at any particular time and place. Such self-imposed limits may well be lower than any officially imposed limit at certain times, and at other times be higher.

The fact remains, however, that many motorists are not very skilled, and many are not as careful as they might be. Also, the average motorist does not want to have to pay fines and he certainly does not wish to be disqualified. We feel, therefore, that even as things are the 30 miles per hour speed limit probably does more good than harm in that it makes some motorists keep to that limit, and causes many others to keep within a reasonable margin of it. If there were no such limit these same motorists

might drive very much faster, and this would add considerably to the distance required for stopping in any emergency that might arise. We fear it is too much to hope that all motorists will observe the limit all the time.

The 20 miles per hour limit for heavy vehicles is another problem, and many people have argued that for modern vehicles it is an anachronism, and that it does more harm than good. Practical experience goes to show that it is the rare exception to find a heavy vehicle which is observing the speed limit unless it is travelling up a hill so steep that it cannot exceed that speed. Without going into the matter in detail, we think it probable that a good case can be made for raising this 20 miles per hour limit to 30 miles per hour.

One final word on the abolition of speed limits. Had they never been imposed there might be good arguments to support opposition to their introduction; but it is a very different proposition, in our view, at a time when road casualties are so deplorably high, to suggest abolishing all existing limits. Speed may not be the cause of all accidents, but speed does make it more difficult to stop when the need suddenly arises. To abolish speed limits might appear to be a direct encouragement to motorists to drive faster.

Medical Examinations after Committal for Trial

The examination of an accused person, and a report upon his mental or physical condition, often proves of assistance to a court in deciding upon sentence or other treatment. Section 26 of the Magistrates' Courts Act, 1952, facilitates such a procedure, and it provides for the payment of expenses to a medical practitioner who attends the court for the purpose of making such a report.

In the report of the Devon County Justices' Committee for the Michaelmas quarter sessions, the following recommendation is made: "It sometimes happens that a solicitor assigned to the defence on a defence certificate granted to a person committed for trial, thinking that an inquiry into the mental condition of his client might assist the defence, has the defendant examined by a doctor and then finds that the doctor is unable, after all, to give a report helpful to the defence. In such a case, the doctor concerned can be paid a fee for making his report only if he attends the court of trial and thus qualifies for a professional witness's allowance.

"It is recommended that representations be made to the Home Office for the legislation empowering a Judge of Assize or a chairman of quarter sessions to authorize, during the period between a defendant's committal and his trial, the inclusion of a fee for such a medical report in the costs to be subsequently allowed by the court of trial on the defence certificate."

When is a Pedestrian Crossing Uncontrolled?

The Pedestrian Crossing Regulations, 1954, define an "uncontrolled crossing" as one to which the provisions of Part II of the first schedule to the regulations apply and the presence and limits of which are correctly indicated and "at which traffic is not for the time being controlled by a police officer in uniform." We refer to this matter because of a report in the press of a case in which, according to the report, a solicitor argued that although an uncontrolled crossing is so defined a crossing must be held to be a controlled crossing, and not an uncontrolled one, if a school crossing patrol is on duty there.

Although we cannot agree with this argument, because the definition in the regulations is unambiguous and admits of no doubt on the point, we think it is unfortunate that a further

complication should exist to confuse road-users about the rights and wrongs of zebra crossings. The Pedestrian Crossing Regulations deal quite tidily with the point. By reg. 4 a foot passenger has precedence on an uncontrolled crossing, which means, in effect, a zebra crossing where no police officer in uniform is for the time being controlling the traffic. The School Crossing Patrols Act, 1953, provides for another type of traffic controller—the school crossing patrol—whose functions are limited to controlling traffic between 8 a.m. and 5.30 p.m., at places where children are on their way to and from school and are crossing or seeking to cross the road. Since July 1, 1954, school crossing patrols are required, as a condition precedent to the exercise of their powers, to wear a uniform approved by the Secretary of State. There is no requirement that the place at which such patrols act must be a place where there is a pedestrian crossing, but perhaps not unnaturally in many cases it is to zebra crossings near their schools which children frequently go to cross the road, and it is at such crossings, therefore, that the school crossing patrols exercise their powers under the 1953 Act, s. 2 (1). But it should be emphasized that they act by virtue of that section, and not because the place happens to be one where there is a zebra crossing.

Once the position is understood we see no need for any confusion. Drivers must realize that a school crossing patrol is *not* a police officer, and that the presence of such a patrol on the pavement or by the kerbside does not make a zebra crossing cease to be an uncontrolled crossing on which a pedestrian has precedence, but when the patrol is exercising his functions under the 1953 Act and is requiring drivers to stop their vehicles, his requirement must be complied with.

Who Was Mr. Hicklin ?

Two years ago it would have been a safe bet that nobody could answer this question except some lawyers (and few of them, perhaps, without casting back into their memory) and still fewer literary men. Today the question could be answered, up to a point, by almost anybody who can read, since the case to which Mr. Hicklin's name is attached has been bandied about in the newspapers and broadcasts for the past six months. How many people, however, could answer the question correctly, even now? We have before us an article by a member of the bar, in which it is said that Mr. Hicklin was recorder of Wolverhampton in 1867; this is incorrect, the recorder having been Mr. J. J. Powell. Probably most people who read his name today suppose that Mr. Hicklin was a person charged with some offence, since the case which brought him fame is most often cited by the title of *R. v. Hicklin*, which suggests an ordinary criminal report. This seems hard on the memory of Mr. Hicklin, who was (in truth) the senior magistrate who heard the now famous case in the petty sessional court, from which an appeal was made to the recorder. The bookseller concerned was Henry Scott; our own report under the name of *Scott v. Wolverhampton Justices* (1868) 26 J.P. 291 and 533, is in this respect less misleading than the name given in the Law Reports. Our report has also the advantage that the Case Stated by the recorder is fully given, and signed with the recorder's name. For some reason which we cannot now recall we reported the proceedings in the Queen's Bench at two stages, giving the full judgment of Chief Justice Cockburn at p. 291 and a second report at p. 533 giving his judgment over again, with those of his learned brethren. A question which may puzzle a student at the present day is why the case was entitled *R. v. Hicklin*, when reported in the Law Reports. The reason is to be found in the old procedure for obtaining a Case Stated. In one of the recent essays on the subject (by a member of the bar) it is said that "under the procedure then in force" the recorder's opinion on appeals from justices had to be

"confirmed" by the High Court, but this is not strictly true. The recorder's judgment stood, unless it was queried by Case Stated, and this was only necessary if asked for on a point of law. In order to obtain the statement of a case, it was before the enactment of s. 40 of the Summary Jurisdiction Act, 1879, necessary to move for *certiorari*. This was formal, where the parties were agreed that a case ought to be stated: Archbold's *Quarter Sessions*, at p. 55 of the edition of 1869, two years after *R. v. Hicklin*, says, "Where an order of sessions is made subject to a case, the *certiorari* is granted as of course." In his earlier book, *Practice of the Crown Office*, at p. 179 of the edition of 1844, Archbold says, of a case where an appellant from a petty sessional court succeeded before quarter sessions:

"If the sessions have quashed it (the conviction) . . . the prosecutor has no remedy unless the sessions have merely quashed it subject to a case for the opinion of the Court. If indeed a case be granted, the order of sessions and case may then be removed by *certiorari* and the opinion of the Court taken upon them: and if the Court then quash the order of sessions, it has the effect of setting up the conviction, which may then be enforced: see *R. v. Allen* (1812) 15 East 333." Here he speaks of a "conviction," but he was writing before the passing of Lord Campbell's Act of 1856, which introduced a new form of criminal or quasi-criminal proceeding, not against a person capable of being convicted but against an inanimate object. Lord Campbell's Act gave an appeal to quarter sessions, and the procedure was assimilated to appeal from a conviction. Hence, in *R. v. Hicklin, alias Scott v. Wolverhampton Justices*, where the police had asked for a Case Stated, the order of the justices was not effectively got rid of until the recorder's opinion had been confirmed by the Queen's Bench. Meantime, the original order of justices stood, as it were in suspense, so that the *certiorari* naturally enough took its title from them and not from the recorder. When the Queen's Bench in turn quashed the recorder's finding, the original order of the justices came back into the picture and could be enforced.

Writing Off

Every trading concern takes as a matter of course that there will be some bad debts to write off. Local authorities find the same problem, not merely in their trading activities but in all their business; that is to say there are sums of money due to them which for one reason or another they do not think it worth while to recover by recourse to the courts. The simplest and most everyday instance is, we suppose, the sum irrecoverable on account of rates. Apart from the ratepayer excused by reason of his poverty, or the company which goes into liquidation so that the local authority has to be content with a dividend, or the bankrupt ratepayer or firm, there are always some who leave the district without leaving their address, or remain there in such circumstances that the responsible advisers of the local authority do not think it worth while to proceed for arrears of rates. Apart from rates, there are all kinds of other sums which local authorities are entitled to recover from private persons, and in theory ought to recover for the benefit of their ratepayers. Occasionally on compassionate grounds, and much more often because, in popular language, the game is not worth the candle, they decide to write off the whole or a part of what is due. We have lately had occasion to advise upon the power of a standing joint committee to do this, and came to the conclusion that s. 30 (3) of the Local Government Act, 1888, although it says nothing in terms about the writing off of irrecoverable moneys, must be regarded as sufficient authority for doing so. The standing joint committee is made liable for paying the expenses of the police force in a county, and must we think have power to write off money due to it on police account, which cannot be recovered.

Where a local authority's accounts are subject to district audit, it is part of the auditor's duty under s. 228 of the Local Government Act, 1933, to investigate any writing off of moneys due to the local authority and, if he comes to the conclusion that the writing off was negligent, or was "misconduct," he can surcharge those responsible. We do not remember ever to have heard of

a district auditor, who doubted the legal power to write off, where this was businesslike and proper. It is in every case a question of practical and sound business administration, whether the debt was in fact irrecoverable, or recoverable only with such difficulty and cost that it was more prudent to write it off and make an "irrecoverable" entry in the books.

FINE ON A CHILD

[CONTRIBUTED]

The fact that "Practical Points" in this journal has recently had to deal with two questions as to the power to fine children shows that some doubt enshrouds the matter. The object of this article is to pursue the question rather more fully than is possible when readers' queries are being answered. (*q.v.* 117 J.P.N. 813, and 118 J.P.N. 239.)

Our starting point must be the Magistrates' Courts Act, 1952, s. 21. This states that "a magistrates' court trying summarily a person under 14 years' old for an indictable offence shall in addition to its other powers have power to impose a fine."

We next proceed to s. 32 of the same Act, where we learn that "a magistrates' court shall not, on finding guilty a person under 14 years' old, impose a fine of more than 40s."

We note that the provision is general—no matter what the offence, the maximum fine on a child is 40s. But what is meant by "fine"? For the answer we must turn to s. 126. Here we find that "In this Act, unless the context otherwise requires . . . 'fine' includes any pecuniary penalty or pecuniary forfeiture or pecuniary compensation payable under a conviction."

It is this definition which has proved a stumbling block to some. Can it really mean what it seems, so plainly, to say? Are we obliged to interpret s. 32, *supra*, as precluding the imposition of compensation and/or costs against a child in excess of 40s., even when the facts of a case reveal damage of many pounds? We recoil even further when we remind ourselves that, while s. 55 of the Children and Young Persons Act, 1933, allows a fine to be enforced against the parents, it does not authorize any increases in the maximum of 40s. for a child.

Now let us link the matter with the Criminal Justice Administration Act, 1914, s. 14 (1): here, after the maximum imprisonment and fine for wilful or malicious damage covered by the section has been detailed, we are told that the convicting court may award "the payment of such further amounts as appear to the court reasonable compensation for the damage so committed." We note with interest that the learned editors of *Stone* comment in their footnote to this provision: "Such compensation is a 'fine' within the meaning of the Magistrates' Courts Act, 1952, s. 126"—with which we respectfully agree. We are puzzled, however, by a note from the same authorities on s. 32, *supra*. On the limit of 40s. they say that "this does not restrict the power in proper cases, to order payment of damages and costs in addition to the fine." Perhaps this is only intended to mean that, if a fine of 20s. is imposed, then compensation or costs up to a further 20s. may be ordered. But we venture to suggest that the words we have just quoted can easily be taken as going further than that: as meaning, indeed, that compensation may be ordered *in addition* to a fine of 40s. Certainly we know of cases where this has been done. But how can such a practice be justified?

We are not greatly helped by the Costs in Criminal Cases Act, 1952. Section 6 (1) (ii) of this statute ordains that "Where the

accused is under 17 years' old, the amount of the costs ordered to be paid by the accused himself under this sub-section shall not exceed the amount of any fine ordered to be paid." It is permissible to wonder, however, whether the phrase "by the accused himself" means that a parent may be ordered to pay a sum larger than that of the fine. If it does mean this, then, as regards costs, one loophole exists.

But it is compensation for loss or damages which is the real bone of contention. There are some who maintain that a loophole exists in the phrase in s. 126, *supra*, "under a conviction." Compensation ordered following a conviction for, say, wilful damage is, it might be argued, a "sum adjudged to be paid by a conviction"—and so outside the scope of this definition, with its use of the curious word "under!" We suggest in answer to such an ingenious contention that the provisions of s. 34 of the Magistrates' Courts Act, 1952, regarding forfeiture compelled the use in the section defining "fine" of the most comprehensive phraseology possible. A sum of money awarded to a person aggrieved, after a conviction for felony, is clearly not a sum "adjudged to be paid by a conviction"—it is consequent upon, not concurrent with, the sentence. Section 34, *supra*, may, of course, apply to juvenile court proceedings, but we submit that, as regards children, the overall limitation of 40s. holds good because the word "under" in the definition section is comprehensive: it was, we submit, because of the existence of s. 34, *supra*, that this preposition was adopted.

There are many cases arising in juvenile courts where it seems just and desirable to order compensation in excess of 40s.—especially against a parent. But we confess ourselves unable to find any way out of the impasse presented by the sections we have quoted.

Finally, we would wish, with respect, to differ from one of the conclusions reached in the answer at 117 J.P.N. 813. There it is suggested that the limit of 40s. does not apply if an award of costs or compensation is made in conjunction with a probation order. The argument is that s. 126 of the Magistrates' Courts Act, 1952, begins with the words "In this Act"—and therefore applies to the wording of s. 32 of the same Act, but not to orders made in pursuance of the Criminal Justice Act, 1948—which, of course, governs probation orders and matters ancillary thereto. But surely there is a misconception here. Look again at s. 32. It envisages no limitations whatever: it applies to all magistrates' courts and all occasions. The words "In this Act" used in s. 126, *supra*, surely do not mean that the operation of such general sections as s. 32 is limited: merely, we suggest, that the words and expressions listed are used in the *Act of 1952* with the definition laid down: but these definitions in no way limit the scope of the sections in which the words so defined are used. So we suggest that the second paragraph of the answer in question cannot be supported: the effect of s. 32 and s. 126 must be taken together, and is general and overriding.

OBSCENE PUBLICATIONS

(Continued from p. 666, ante)

The facts, and the way the nineteenth century judicial mind approached them, can be understood (perhaps) a little better from our report of *Steele v. Brannan* (1872) 36 J.P. 360, which carried the fantastic story of the pamphlet in question in *R. v. Hicklin* a stage further. After the Wolverhampton case under the Act of 1857, the Protestant Electoral Union produced an emasculated version of what Mr. Scott had been selling. For disseminating the new version one Mackey was indicted for a misdemeanour at Winchester quarter sessions, when the jury disagreed. The Union thereupon issued yet a third version of their publication, in the form of a report of the Winchester proceedings, with the pamphlet to which those proceedings had related. This was an ingenious device to get round the law, as declared in *R. v. Hicklin*, by disguising the challenged work as part of a report of proceedings in the courts. After seizure of this version at the Union's premises in London, and a magistrate's order for destruction, the Union sought a decision by Case Stated in the Common Pleas, but fared no better with Bovill, C.J., and his brethren than they (or, rather, Mr. Scott as their scapegoat) had fared before Cockburn, C.J., in 1868. This second decision is worth perusing both because of the dramatic quality of the story as revealed, and because the facts come out more clearly than in the better known *R. v. Hicklin*.

The force of the decision by Lord Chief Justice Cockburn and his brethren in *R. v. Hicklin* lies partly in this fact—that the publication was not pornographic in intention or, indeed, in any ordinary sense in execution. Here was a book produced for a polemical purpose (religious or at worst political) and not for profit, and designed to be read by adult voters, at a time when the franchise was still limited, as it was until 1867, to a comparatively narrow class of supposedly educated persons. Yet this book was held to be obscene, because, if it came by chance into the hands of persons less qualified to understand its purpose than were those for whom it was intended, it might have a corrupting influence. Upon these premises and such a precedent, no book which could corrupt any person, however susceptible, would ever be safe by reason of its being a work of scholarship produced for instructed and strong-minded persons, or a work of edification, or a work designed to enlighten the public on some serious topic; least of all by reason of artistic quality, and certainly not when written for the amusement of the reader. This came out very clearly in the successful argument of counsel for the prosecution in *R. v. Hutchinson and Others: The Times*, September 18, 1954, and in the recorder's summing-up, where he said that a book which might not affect the mind of an archbishop "might affect the mind of a callous youth, or a girl just budding into womanhood."

Indeed, the judgments in *R. v. Hicklin*, and now in *R. v. Hutchinson*, extend logically far enough to secure the condemnation of every book of which any part could possibly stir libidinous thoughts in the mind of any person who can read it—the only safeguard for author and publisher lies in writing in some foreign, preferably some ancient, language.

That this is the position of our law has been proclaimed : in effect by Lord Brentford when he was Home Secretary ; in terms by Mr. Mead in the case of the Warren Gallery. From time to time, moreover, in this country and still more often in the United States, the law has been set in motion on this

view, although it is fair to those charged with its enforcement in this country to say that works of scholarship, scientific works, and serious works of fiction have, more often than not, been let alone. In the United States, partly because of divergencies of law and practice between different states and partly because of the influence of Anthony Comstock in the nineteenth century and his disciples in the twentieth, prosecutions of authors of repute or of publishers of the works of such authors were more common for some years, until curbed by decisions of the superior courts which have not been followed in this country.

In *R. v. Hicklin, supra*, the Court of Queen's Bench did refer to this question of differentiation which, broadly speaking, is applied in favour of dead authors, and did so in terms which do not afford a satisfactory test. As applied, for example, in *Stephen's Digest*, and in *R. v. Thomson, infra*, it is said that we study the classics in order to discover how the ancients lived, and the law is apparently prepared to allow even young men (and now one must add young women also) to read Juvenal or Petronius and, by inference, to read their works in English. But if it is desirable to run the risk that persons whose minds could be corrupted will get hold of these works (because otherwise the incorruptible may not discover how a dissolute minority behaved 2,000 years ago), must it not be at least as proper to make books available which deal with problems of conduct at the present day ? In fact, public authorities in England have (with some notable, one might say some notorious, exceptions) given an affirmative answer to this question. The list of books against which proceedings of one type or another have been taken in the United States is amazing, by reason alike of its extent, its inclusion of established classics, which have been part of the literary heritage of all mankind for centuries, and its inclusion also of modern books, especially serious didactic fiction and books of the popular scientific and quasi-scientific type, which are sold here as a matter of course by ordinary booksellers. Upon what legal footing does the discrimination stand, which in practice is exercised in England ? It is necessary in the first place to distinguish (both here and in the United States) between executive action by the Customs when books are sought to be imported, and action by the Director of Public Prosecutions or a police authority, by way of proceedings in the courts, when a book is produced here and put on sale, or put on sale after being brought from overseas unchallenged.

To take first the most normal case, of a book stocked in a shop. Of their own accord, or at the instance of some person or organization interested in the suppression of alleged impurity, the police obtain a copy and decide to set the law in motion. The regular process is under the Obscene Publications Act, 1857, and begins with a warrant to enter, seize, and bring before the magistrates articles kept for sale or exhibition, etc., being articles "of such a character and description that the publication of them would be a misdemeanour and proper to be prosecuted as such." These last seven words are of the essence of the complaint to the magistrate which is the basis of the warrant, as was made clear by Cockburn, L.C.J., himself in *ex parte Bradlaugh* (1878) 3 Q.B.D. 509. Their vital importance at common law, as well as under the statute, is pointed out by Blackburn, J., in a reference to Dryden and Shelley in the middle of p. 374 of *R. v. Hicklin, supra*. The magistrate must be satisfied that there is this *prima facie* propriety about the seizure, and the same necessity runs through the

subsequent proceedings. Suppose, therefore, that a magistrate was invited (taking an extreme case, not perhaps likely to arise in England) to issue his warrant in respect of copies of Juvenal in the library of a local grammar school, where they are kept for the purpose of being exhibited or lent to pupils. On examining the books he finds that all the *Satires* except the sixth are printed both in Latin and in English; the sixth is in Latin only. He can thereupon say "the sixth satire is obscene, as I know because I remember enough of my Latin to be able to read it, but I am not satisfied that its exhibition to school children under pedagogic supervision constitutes a misdemeanour proper to be prosecuted."

It is this "let out," we imagine, which is used—half unconsciously, it may be—in the ordinary case of an established classic, a serious scientific book, and even in most cases of a novel dealing with sexual topics written by an author of admitted standing and published by a known and reputable firm.

But of course, until a book has been considered by the court, the author, publisher, or salesman can only guess whether the statutory "let out" will be used; the mere fact of being prosecuted, albeit unsuccessfully, can be injurious to a writer or publisher of good repute, and the decision whether to prosecute rests entirely upon the sort of guess made by the police, or by the Director of Public Prosecutions when he intervenes, about the view likely to be taken by a jury if an indictment is preferred, or by the magistrates upon the words "proper to be prosecuted," if the Act of 1857 is relied on.

The leading article published by *The Times*, on the same page as the letter from Mr. Graham Greene to which we have referred, concluded that in the great majority of cases a jury or a bench of magistrates will not find it particularly difficult to decide whether a publication is obscene or not. This can be conceded, though it begs an awkward question about the meaning of the word "obscene," but the concession is no more than half the battle. What is much more arguable, in nearly all the cases which matter to the public and posterity, is whether a book which contains some measure of obscenity is on that ground "proper to be prosecuted." In the United States, as we have said, a whole galaxy of works, classical and modern, have been challenged as obscene—though it should be said that the language of the statutes under which the challengers proceeded differed in the different States, and thus the courts may not have been considering, in theory, exactly the questions which have to be answered by an English court. On the whole, whatever the statutory language, the tendency of the courts today in New York and Massachusetts, the two States where such questions have most often arisen, is to depart from *R. v. Hicklin, supra*, and this just at the time when our own Court of Criminal Appeal has so emphatically reasserted the authority of that case. With a summary of the American decisions on his desk, the English lawyer may be driven to conclude that opinion even here, tolerant as the British public are of restrictions on their liberty expressed to be imposed for "moral" reasons, would have revolted had it not been for a commonly generous interpretation by authority of the words "proper to be prosecuted." Meantime it must be noted that, despite reconsideration of the law in the United States (to which also we shall come back), the law as stated in *R. v. Hicklin, supra*, has been emphatically restated this year in *R. v. Reiter and Others* [1954] 1 All E.R. 74; 118 J.P. 262. That was a judgment of the Court of Criminal Appeal, upholding in substance and effect, though with some hint of differing from the recorder's purple patches, a conviction of a firm of publishers at the Old Bailey. The books in question were hardly of a serious type; as regards the law's approach to the work of

responsible authors and respectable publishers, we do not know that the tests applied by English law to a book have been better stated than in a judgment delivered on September 18, 1953, by the High Bailiff of the Isle of Man, of which a correspondent in the island has been good enough to supply us with a copy. In that case booksellers of unchallengeable respectability (Boots Cash Chemists, Ltd.) were charged with unlawfully keeping for the purpose of lending upon hire two obscene books. We gather that the Obscene Publications and Indecent Advertisement Act, 1907, of the Manx legislature is, so far as relevant, to the same effect as the English common law, which underlies the English statute of 1857, and the High Bailiff, exercising in this matter the jurisdiction which quarter sessions with a jury would exercise in this country, applied the English tests. The two books in question were ordinary novels, issued to any person using Boots' Book Lovers Library, which is a subscription library of the standard type; the prosecution admitted that the library did not keep in stock the pornographic and semi-pornographic publications which are exhibited in the windows of some less reputable shops and lending libraries. The books in question had been commended in the accepted organs of the literary world by well recognized reviewers, and in the light of after events it is interesting to see that one of these books was *The Philanderer*, the publishers of which went in June, 1954, before Stable, J., and a jury in this country, and were triumphantly acquitted, after a summing up which seems likely to become a classic. After reading this and the other book submitted to him last year, the High Bailiff expressed the opinion that they were "not more obscene than many of the well-known books which are written today by distinguished authors and accepted practically universally." Nevertheless, applying the tests laid down in *R. v. Hicklin, supra*, he found that, whether or not the books had literary merit, there were certain passages tending to deprave and corrupt those whose minds are open to such immoral influence, and reluctantly (as he said) found it his duty to convict, and to impose a nominal fine. In the course of his judgment he quoted Mr. Justice Stephen as having said that the publishing of Aristophanes, Juvenal, and many other writers, Greek and Latin, French and English, could (even in English) not be regarded as a crime, "despite their containing obscenity for which it is impossible to offer any excuse," because it is for the public good "that we may be able to form as complete an estimate as possible of their characters and the time in which they lived." No educated person would quarrel with the last quoted expression of opinion, but, if one stops there, the position is that "obscenity for which it is impossible to offer any excuse" can be published with advantage if translated from a foreign (especially an ancient) language, or if in English it has come down from a past century. This may often be a workable criterion in practice, and—to the credit of an Old Bailey jury—it was applied to *The Heptameron* in *R. v. Thomson, infra*, but how does it square with *R. v. Hicklin*, where the offending passages were translated from the works in Latin of by-gone ecclesiastics, and were avowedly reprinted in order that the British public might "form as complete an estimate as possible" of the character of the learned authors?

As for "the times in which they lived," an unexpurgated English translation of one of the most famous works capable of study for that purpose, *The Heptameron of Margaret of Navarre*, was the subject of a common law indictment in the case we have just mentioned, namely *R. v. Thomson* (1900) 54 J.P. 457. This contains a summing up by the then Common Serjeant which was adopted as a valuable statement of the law in *R. v. Barracough* (1906) 70 J.P. 14. By an appropriate coincidence defending counsel in *R. v. Thomson* was the French descended Mr. Chartres Biron, afterwards Chief Magistrate, who as such

condemned *The Well of Loneliness*, but as counsel in 1900 truly described *The Heptameron* as a classic in its original language, and submitted that it was no less a classic in English, and not a book against which proceedings ought to have been instituted. The summing up, whilst it cannot be attacked as unfair, was broadly on the side of a conviction, in that the Common Serjeant called attention to other books found on the defendant's premises and to the low price of the book, as negativing any idea of its being published for a serious literary purpose. The most valuable part of the summing up is as follows :

" There are in writings of respectable people sometimes passages of an objectionable nature, which no doubt it would be wrong to destroy, because to students and to people who have to deal with questions of manners and so on such passages are valuable ; it is right that students should know the manners of the people they are studying, however gross . . . Coming to the book here in question, it is for you to decide, looking at it as a whole and taking into consideration the extracts that have been read and the manner in which it was sold, whether it was sold with a view to corrupt the public morals. If it had been in a library to which students had access, nobody would deny that the book was properly there and properly kept for a proper use. Here the defendant is not charged with having published the book in a library, on the one hand, or to boys or those to whom its publication would clearly be improper. You are the sole judges whether the book is a fit book to put into people's hands in these days at the end of the nineteenth century. I am going to hand you the book and you will say whether the book as sold is of such a tendency as I have mentioned . . . You will look at the book and the catalogue with which it was sold, and you will see what proportion the stories set out in the indictment bear to the whole, and you will judge whether, sold as it was for 1s. 11d. and being what it is, containing the passages set out, it is such a book put forward in such a way as to clearly tend to the corruption of morals."

On this summing up the defendant was acquitted ; so far as we have found this prosecution was the last attempt in London to use the criminal law as a means of keeping from the ordinary reader a work of literature, which was already established and had been known for centuries to educated people, though such attempts persisted long afterwards in the United States. Outside London, while this article was being printed, a Wiltshire bench has been induced to declare *The Decameron* obscene, after five centuries of ranking in the forefront of the world's accepted literature, and the Director of Public Prosecutions instructed counsel to uphold the decision on appeal : despite this the appeal to quarter sessions was successful (*The Times*, September 16, 1954). The Common Serjeant's summing up in *R. v. Thomson*, and the High Bailiff's judgment in the Manx case, may be compared with *R. v. De Montalk* [1932] 23 Cr. App. Rep. 182, which is cited in the text books for two propositions. The first is that at common law the essence of the offence is an intention to deprave those who read the book or see the picture. The second, that it may be a good defence that publication was for the public benefit. The first proposition looks strange, when compared with *R. v. Hicklin, supra*, where there was expressly said to be no actual intention to deprave. True, the proceedings in *R. v. Hicklin* were not at common law. They were under the Act of 1857, but before the magistrates can order the destruction of a book or picture under this Act they are required to satisfy themselves that its publication is a misdemeanour—in other words, that all the elements of the common law offence are present, which must include intention to deprave. The explanation of the apparent antinomy is to be found in a passage of counsel's speech in *R. v. De Montalk, supra*, where he said that the intention to

corrupt is to be inferred from the act of publishing a book or picture which has a tendency to corrupt. This statement of the law was evidently accepted by the learned recorder of London in that case, and endorsed by the Court of Criminal Appeal. In *R. v. Barracough, supra*, which was cited with approval, though it was not on all fours (having begun as an alleged criminal libel against an individual) the Court for Crown Cases Reserved unanimously said that the old form of indictment should be retained averring the intention—although it is plain that this averment is sometimes fictitious, so that this first proposition of the text books does not help the author or publisher of a book written *bona fide* with no intention in fact to corrupt or deprave its readers. The second proposition, that it is a defence to show that publication of a book or picture is for the public good, is more important. Upon this, the recorder said : " Although the matter was obscene . . . it would be a defence if the thing was done for the public good because, though I am not sure there has been any case upon it, I accept a submission made by one of the most learned of our Judges, Mr. Justice Stephen, in these words—' A person is justified in exhibiting disgusting objects, in publishing obscene books . . . drawings, or other representations, if their exhibition or publication is for the public good, as being necessary to religion or science, literature or art, or other objects of general interest, but the justification ceases if the publication is made in such a manner, to such an extent, or under such circumstances, as to exceed what the public good requires in regard to the particular matter published '. Therefore if you are of opinion (the recorder continued) that this can be for the public good as an advancement of literature, in my opinion it would be a defence."

The point of mentioning " the advancement of literature " in this summing-up was that defendant's " publication " of the work impugned had consisted in his asking a printer to tender for setting up type and printing privately a limited edition of a hundred copies of his own poems, which he intended to circulate among his friends who were, according to him, mainly literary people. The manuscript poems were not said to have been seen by anyone except the printer, who called in the police (the " publication " thus being technical), nor, in view of the limited edition, could the defendant have aimed at a wide public. The jury found him guilty, and the conviction was upheld by the Court of Criminal Appeal, but on the facts and what had been said by Mr. Justice Stephen about " extent " of publication they could equally have acquitted. The words " a submission made by Mr. Justice Stephen " may strike the reader as strange (Judges do not commonly " submit ") until he realizes that the reference is not to an utterance by his lordship from the bench, but to his *Digest of English Criminal Law*. Here Sir Fitz-James Stephen was setting out the law in a series of short paragraphs, stating positively that which could be drawn explicitly from statutes and cases, and submitting his own views on further points. In the edition to which the recorder was referring the " submission " was said to occur on p. 134. It goes back to p. 104 of the original edition of 1877, soon after *R. v. Hicklin, supra*, and will be found in art. 228 on p. 172 of the edition of 1950, where the learned editor has amplified the older matter ; the whole will repay study.

(To be continued)

NOTICES

The next court of quarter sessions for the city of Coventry will be held on Wednesday, November 3, 1954, at the County Hall, Coventry, commencing at 11 a.m.

WEEKLY NOTES OF CASES

QUEEN'S BENCH DIVISION

(Before Lord Goddard, C.J., Lynskey and Parker, J.J.)
October 13, 1954

R. v. NUNEATON JUSTICES. Ex parte PARKER
Magistrates—Application to issue summons for careless driving—Refusal—Settled practice under which dangerous driving to be charged in first instance—Mandamus.

APPLICATION for order of mandamus.

On April 26, 1954, the applicant, Parker, an inspector of police of the Warwickshire Constabulary, applied to the Nuneaton justices to issue a summons for careless driving against Frank Bostock. It was stated that no one had been hurt in the accident in question. The chairman said that on principle he would not grant a summons charging careless driving only, as the justices had a settled practice under which any charge in relation to driving must, in the first place and in the absence of exceptional circumstances, be a charge of dangerous driving, and that it should be left to the justices, if the charge was not proved, to decide whether it was a proper case for them to direct that the proceedings should continue on a charge of careless driving. The applicant obtained leave to apply for an order of *mandamus* directing the justices to issue the summons.

Held, that it must be left to the police to decide what charge they would prefer, and that it could lead to a grave miscarriage of justice if charges of dangerous driving were made which the evidence in the possession of the police did not support, and, therefore, an order of *mandamus* would issue.

Counsel : *Wrightson* for the applicant. The justices did not appear.

Solicitors : *Sharpe, Pritchard & Co.*, for R. M. Willis, Warwick.
(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

R. v. LANCASHIRE QUARTER SESSIONS APPEAL COMMITTEE. Ex parte HUYTON-WITH-ROBY U.D.C.

Public Health—Dustbin—Notice by local authority requiring provision by owner—Successful appeal by owner to magistrates—No order by magistrates as to costs—Appeal by owner to quarter sessions with regard to costs—“Person aggrieved”—Jurisdiction of quarter sessions—Public Health Act, 1936 (26 Geo. 5 and 1 Edw. 8, c. 49), s. 301.

APPLICATION for order of *cetiorari*.

Mrs. Eira McLoughlin, the tenant of 16 Longview Drive, Huyton, complained to the Huyton-with-Roby Urban District Council that her house was suffering from unpleasant smells. Having made an inspection, the council, on July 28, 1953, served a notice under s. 75 (1) of the Public Health Act, 1936, on Messrs. Edwards, the agents for the owners, requiring them to supply a proper dustbin. Messrs. Edwards appealed under the sub-section to a court of summary jurisdiction, which allowed the appeal and ordered that the tenant should provide the dustbin. The magistrates made no order as to costs. Messrs. Edwards appealed to quarter sessions against the magistrates' refusal to order costs; the council also appealed to obtain a variation of the order in relation to liability to provide the dustbin, but subsequently abandoned their appeal. When the matter came before the appeal committee of quarter sessions, a preliminary objection was taken on behalf of the council that quarter sessions had no jurisdiction to hear Messrs. Edwards' appeal on the ground that Messrs. Edwards were not persons "aggrieved" by the decision of the magistrates within the meaning of s. 301 of the Act, and that, as costs were a question of discretion for the magistrates, quarter sessions had no power to deal with the exercise of discretion by the magistrates. The appeal com-

mittee overruled the objection, heard and allowed Messrs. Edwards' appeal, and allowed them the costs of the proceedings before the magistrates and the costs of the appeal to quarter sessions. The council obtained leave to apply for an order of *cetiorari* to bring up and quash the order of the appeal committee on the ground that they had no jurisdiction to hear the appeal.

Held, (i) applying *R. v. Surrey Quarter Sessions. Ex parte Lilley* (1951) 115 J.P. 507, that a successful appellant before magistrates from a decision of a local authority has a legal right to ask for costs and to demand that his application be considered by the magistrates in a judicial manner, and, unless in the exercise of their discretion they feel bound on proper grounds to refuse costs, to receive costs; (ii) where an inferior court is given a discretion, a superior court will normally not interfere if there were any grounds on which the inferior court could exercise its discretion, but if an inferior court exercises or purports to exercise a discretion when no facts are adduced which would justify that exercise, the matter becomes appealable to a superior court. Quarter sessions, accordingly, had jurisdiction to deal with Messrs. Edwards' appeal, and no order of *cetiorari* would issue.

Counsel : *Wrightson* for the local authority ; *Basil Nield, Q.C.*, and *G. B. H. Currie*, for the owners.

Solicitors : *Sharpe, Pritchard & Co.*, for H. E. H. Lawton, Huyton ; *Purchase, Clark & Treadwell*, for Rollo & Mills-Roberts, Liverpool.
(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

October 11, 1954
SURTEES v. BENEWITH

Road Traffic—Using uninsured vehicle—Conditional discharge—No special circumstances—Road Traffic Act, 1930 (20 & 21 Geo. 5, c. 43), s. 35 (2)—Criminal Justice Act, 1948 (11 & 12 Geo. 6, c. 58), s. 12 (2).

CASE STATED by Surrey justices.

At a court of summary jurisdiction on March 18, 1954, an information was preferred by the appellant, Richard Surtees, a police officer, charging the respondent, Robert Benewith, with using an uninsured motor vehicle on a road, contrary to s. 35 (2) of the Road Traffic Act, 1930. The respondent started a private car hire business on January 18, 1954. On discovering that his own insurance company would not insure for private hire, he approached a colleague who gave him the name of an agent of another office. He saw that agent on January 25, 1954. He was stopped by the police on that day, by which time he had been driving an uninsured motor car for a week. The justices convicted the respondent, but gave him a conditional discharge, and, accordingly, by virtue of s. 12 (2) of the Criminal Justice Act, 1948, no disqualification followed. The appellant appealed, and contended that the justices ought not to have used the machinery of conditional discharge to avoid disqualification.

Held, following *Dennis v. Tame* (1954) 118 J.P. 358, that justices were entitled to use the machinery of conditional discharge to avoid disqualification only if there were circumstances in the case which would amount to special circumstances entitling them to refrain from disqualifying ; in the present case there were no such circumstances ; and, therefore, the case must be remitted to the justices with a direction to disqualify, although the disqualification could only take effect from the date of conviction.

Counsel : *Wrightson* for the appellant. The respondent did not appear.

Solicitor : *Solicitor, Metropolitan Police*.

(Reported by T. R. Fitzwalter Butler, Esq., Barrister-at-Law.)

MISCELLANEOUS INFORMATION

ALLOWANCES TO JUSTICES

By the Justices' Allowances Regulations (S.I. 1954, No. 1206) the rates of lodging allowance (except in respect of sleeping accommodation in trains) payable under the Justices of the Peace Act, 1949, s. 8, are increased to 37s. 6d. per night in London, and 30s. per night in other cases.

LANCASHIRE COUNTY COUNCIL ACCOUNTS, 1953/54

Lancashire is not the county with the greatest area, for example, rural Norfolk has a considerably larger acreage than Lancashire's 1,036,000 ; but its population of 2,042,000 is only exceeded by urban Middlesex. The services which the county council provides are accordingly on a massive scale and its expenditure correspondingly large.

This fact is evident throughout the abstract of the council's accounts for the year 1953/54, published on August 31 by the county treasurer,

Mr. N. Doodson, F.I.M.T.A., A.S.A.A. Gross revenue expenditure amounted to approximately £27 million, £16 million of which was expended on education and over £2 million on each of the police, health and highways services. Over £16 million of the total was met by government grants (including an equalization grant of £4½ million, of which £2½ million was left in the county treasury after paying the district councils their share), some £8½ million was met out of rates and the balance came chiefly from charges made for some of the county services. Incidentally, equalization grant meets 22 per cent. of expenditure.

The average rate in the £ levied by the rating authorities in Lancashire for 1953/54 was estimated at 22s. 0d., comparing with an average figure of 22s. 6d. for all English counties. The county precept of 14s. 7d. was more than sufficient to meet expenditure and the balance in hand increased during the year by £502,000 to a total of £2,113,000.

The council's liability in respect of loan charges continues to grow. During 1953/54 debt increased by close on £2 million to a total of £15½ million representing £7 12s. 7d. for each person resident in the county area.

Like its other activities and possessions the superannuation fund maintained by the county council under the Local Government Superannuation Acts, 1937/53, is huge by ordinary local government standards. At March 31 last it amounted to £4,386,000 and the surplus on the year's working was £420,000. We note that current Lancashire policy is to invest superannuation surplus moneys in its own general loans fund (£3,612,000 of the total fund is so invested) and think this a sound practice under present conditions. In Dalton days when P.W.L.B. interest rates were kept much below the rate on the market treasurers did well for their authorities by investing superannuation moneys "outside" but nowadays the advantages to be gained from this policy are much lessened. They are not even now entirely eliminated, but to benefit under present conditions a great deal of time must be spent in studying the market and expert advice obtained.

Mr. Doodson concludes his attractively printed and well designed abstract with a useful series of statistical and cost tables.

NORFOLK FINANCES, 1953/54

Mr. T. Clay, Norfolk county treasurer, has again produced his useful summary of the annual accounts of the Norfolk county council, giving within the space of 40 pages all the information which council members or interested ratepayers are likely to require.

Norfolk is, of course, one of the leading agricultural counties; whereas it covers 1,303,000 acres (making it in size the fourth largest administrative county in England) its population is just 375,000, equal to 290 per 1,000 acres. Only five English counties have a lower density. There are 4,840 miles of roads to be maintained (of which 2,130 are unclassified and therefore non-grant earning) and highways

expenditure is correspondingly high, net expenditure being equivalent to a rate of 9s. 0d. (subject to exchequer equalization grant).

Rateable value at April 1, 1953, was £1,536,000 and rateable value per head of population £4 2s. 0d. Sixty-seven per cent. of the total rateable value consists of dwelling-houses which have an average rateable value of £9: only two English counties have a lower rateable value per head. This position results in payment to the county council of a large equalization grant of £1,600,000, equal to a rate of 21s. 9d. In total, grants meet no less than £4,842,000 of total expenditure of £6,643,000.

Rates precepted in 1953/54 totalled 15s. 6d., net expenditure falling upon rates was equal to nearly 15s. 5d. and therefore the year's working added a small amount to balances which at the year end stood at £627,000.

In Norfolk the provision of small holdings is an important duty of the council and holdings administered by the council exceed 31,000 acres. In 1952/53 there was a deficiency of £7,300 but in 1953/54 a surplus of £2,200 was realized, income having increased during the year by £14,000, due to increased rents charged to tenants. In East Norfolk the average rent paid per acre was £2 16s. 5d., in West Norfolk £4 1s. 7d. The surplus for the year was carried to the Special Renewals Reserve Fund which at March 31, 1954, amounted to £48,000.

Loan debt at the end of the year amounted to £4,062,000 and Mr. Clay comments that the growth of debt during the post war period is a significant factor in the finances of the council. Seven years ago the debt was £1,684,000 of which two-thirds was in respect of small-holdings. £564,000 relating to all other services at March 31, 1947, has now risen to £2,891,000 and the treasurer states that the growth must be expected to continue for some time to come.

Coastal protection is obviously important in East Anglia, and Norfolk contributed over £29,000 to district councils during the year to assist in this work. Contributions amounting to £34,000 were also paid in respect of rural water schemes.

LAW AND PENALTIES IN MAGISTERIAL AND OTHER COURTS

No. 88.

MISPLACED INGENUITY

A 13 year old boy appeared at Lowestoft Juvenile Court earlier this month to answer two charges under the Coinage Offences Act, 1936. The first charge alleged that the boy had silvered, with a certain material called model aircraft dope capable of producing the colour or appearance of silver, nine farthings with intent to make them pass for sixpences. The second charge under s. 5 of the Act alleged that the defendant had uttered nine counterfeit coins representing sixpences.

For the prosecution it was stated that the boy boarded a bus in South Lowestoft at about 8 p.m. He went to the top deck and bought a 1½d. ticket from the conductor and at the same time asked the conductor if he could give him two half-crowns for 10 sixpences. At a subsequent bus stop the boy came down the stairs and the conductor gave him the half-crowns, taking the other coins which were given to him with the heads upwards. The boy then left the bus. The conductor noticed that the coins were sticky and then saw that the top coin was a genuine sixpence but that the others were farthings painted over with silver paint.

A detective interviewed the boy at 10.15 the same night when the boy said "I admit it. I know it is fraud." Next day the boy said "I thought I could get away with it."

The detective referred to above told the court that the boy told him he had got enough pocket money to pay for all his needs, that he was ashamed of himself and that he would repay the conductor the 5s. the same evening. The detective confirmed that the payment had in fact been made.

The boy's father told the court that his son had never given any trouble, that he was above average intelligence, that he did not do it for want of pocket money and that he (the father) thought that it had been done for devilment.

The chairman, fining the boy a total of £2 and ordering payment of 30s. costs, told the boy that had he been older he would probably have incurred a prison sentence.

COMMENT

Section 2 of the Act of 1936 enacts, *inter alia*, that a person who gilds or silvers, or, with any material colours any current copper coin to make it resemble or pass for any current gold or silver coin, shall be guilty of an offence and may be punished with imprisonment for life.

By s. 17 (a) of the Act "copper coin" includes any coin of any metal or mixed metal not being a gold or silver coin but there has since been

excluded from this definition by virtue of the Coinage Act, 1946, coins of cupro-nickel or of other metal or mixture of metals specified in any proclamation made under s. 3 (c) of that Act.

The second charge of uttering under s. 5 of the Act may be punished with a maximum of two years' imprisonment.

(The writer is indebted to Mr. J. N. Martin, clerk to the Lowestoft justices, for information in regard to this case.) R.L.H.

No. 89.

OPIUM CAUSES TROUBLE

A 25 year old ship's steward was the defendant in a case heard recently by Mr. McFarland, the learned stipendiary magistrate of Liverpool, which also involved two Chinese subjects.

The defendant was charged first with permitting certain rooms, of which he was the occupier, to be used for the smoking of prepared opium contrary to s. 6 of the Dangerous Drugs Act, 1951, and secondly with having in his possession prepared opium contrary to the same section. The third charge, also laid under the same section, alleged that the defendant had in his possession lamps, trays, pipes, a file and needles for use in connexion with the smoking of opium, and the last charge alleged that defendant had in his possession raw opium when not duly authorized, contrary to the Dangerous Drugs Regulations, 1953.

The two Chinese were charged with smoking prepared opium in a dwelling-house contrary to s. 6 of the Act of 1951.

For the prosecution it was stated that when detectives searched the room occupied by the defendant in Liverpool they found one of the Chinese in the act of passing an opium pipe to the other. A spirit lamp was burning and on the floor were two packets of opium. Two needles and a file, two opium pipes, some raw opium and five packets of prepared opium were also found. The British defendant told the officers that he had "a bad stomach" and smoked opium to relieve the pain.

The Chinese subjects, who had previous convictions, were fined £20 each and told that if they came before the court again they would be recommended for deportation. The British defendant was fined a total of £115 and was given 28 days to pay, or in default six months' imprisonment.

COMMENT

Part II of the Act, which takes in s. 6, is devoted to discouraging the importation, manufacturing, selling and using of prepared opium.

By s. 7 of the Act "prepared opium" is defined as being opium prepared for smoking and includes dross and any other residues remaining after opium has been smoked.

By s. 15 (2) of the Act offences under s. 6 may be punished on summary conviction by imprisonment for 12 months and a fine of £250.

(The writer is indebted to Mr. H. A. G. Langton, M.B.E., clerk to the Liverpool justices, for information in regard to this case.) R.L.H.

No. 90.

TAKE A TAPE MEASURE WHEN CATCHING LOBSTERS

On October 4 last the snares which surround fishermen were well illustrated by a case in which two defendants appeared to answer a charge that in August last they had landed lobsters of less than the prescribed measurements, namely, lobsters each of which measured less than nine inches from the tip of the beak to the end of the tail when spread out as far as possible contrary to art. 2 (2) of the Sea Fishing Industry (Crabs and Lobsters) Order, 1951, made under s. 4 of the Sea Fishing Industry Act, 1933, as amended by s. 38 of the Sea Fish Industry Act, 1938.

It was stated that the prosecution was the first of its kind to be heard in the area for many years and after one defendant had pleaded not guilty and the other guilty, and the case against the one had been heard, both received a conditional discharge.

COMMENT

Article 2 of the order prohibits landing, selling or having in possession for the purpose of selling any lobster of less measurement than that referred to above and also prohibits the landing of any crab which measures less than 4½" across the broadest part of the back.

The order represents a minor triumph for the crustacean world for before 1951 only lobsters less than eight inches in length and crabs less than 4½" in width were protected by virtue of ss. 8 (1) and 9 of the Fisheries (Oysters, Crabs and Lobsters) Act, 1877.

(The writer is indebted to Mr. H. M. Hanslip Ward, M.A., clerk to the Harwich justices, for information in regard to this case.) R.L.H.

PENALTIES

Newcastle—September, 1954. Stealing 175 cigarettes, the property of his employers. Fined £20, to pay £4 4s. costs. Defendant, a security officer employed by a firm of tobacco manufacturers.

Scarborough—September, 1954. Causing unnecessary suffering to three puppies. Fined £5, to pay £7 3s. 6d. costs. Defendant, a hawker, buried three one day old puppies alive in a sack.

Kingston—October, 1954. Assault. Fined £5 and to pay £3 3s. costs. Defendant on being informed that he had failed in his driving test, told the examiner to get out of the car and after the examiner had walked across the pavement to his office defendant struck him in the face.

Hebburn—October, 1954. Selling milk to which water had been added. (Two charges.) Fined £20 on each charge. Defendant company's milk was found to have 5·7 per cent. and 2·7 per cent. of water. For the company it was stated that they bought their milk from 88 suppliers under guarantee that it was not watered, and it was not possible to test samples every day. It had since been found that milk from one of the producers had 9·4 per cent. added water.

Loughborough—October, 1954. Sending a telegram to a wife for the purpose of causing her inconvenience. Fined £2, to pay 7s. 6d. costs.

Wisbech—October, 1954. Permitting vehicles to be used when the number of passengers was likely to cause danger. (Two charges.) Fined £5 on each charge. When the bus was stopped by police and the door opened, several passengers fell out into the road. There were 69 passengers in a 30-seater bus.

Oban Sheriff Court—October, 1954. Disobeying the lawful command of the ship's captain to return to sea. Two defendants, each fined £10. The trawler in which the defendants served ran ashore but was refloated. Defendants said the trawler was 35 years' old and having been aground for four hours they did not wish to risk going out to sea in it.

Berwick—October, 1954. (1) Being in charge of a car while under the influence of drink. (2) Taking away a car without the owner's consent. (1) Fined £100 and life disqualification. (2) Fined £25. Defendant, a 69 year old farmer, was being convicted for the fourth time since 1936 of being under the influence of drink while in charge of a car.



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PERSONALIA

APPOINTMENTS

Major Reginald Bullin, O.B.E., T.D., J.P., (of Edmonds & Bullin, solicitors, Portsmouth) has been elected a Vice-President of The Magistrates' Association, of which the Lord Chancellor is President. The other Vice-Presidents are The Right Hon. The Lord Mayor of London, Miss S. Margery Fry, LL.D., D.C.L., M.A., J.P., and The Right Hon. The Viscount Templewood, G.C.S.I., G.B.E., D.C.L., D.L.

Mr. J. E. Bond, formerly chief administrative assistant of the Bexley, Kent, borough council, has been appointed deputy town clerk of that council. Mr. Bond has been in the service of the Bexley corporation for 28 years.

Mr. George Hooper, present deputy clerk and solicitor, has been appointed clerk and solicitor of Hayes and Harlington urban district council, the designation of the post having been changed from "the clerk of the council" to "the clerk and solicitor of the council." Mr. Hooper succeeds Mr. A. E. Higgins who retires on October 31, having attained the age of 60 years. Mr. Higgins has been with the council for 33 years. During the last 12 months, while Mr. Higgins has been in ill-health, Mr. Hooper has been acting clerk of the council. Mr. Hooper was formerly assistant solicitor to Tonbridge, Kent, urban district council, under whose clerk he served his articles, being admitted in June, 1947. From that year until 1949, Mr. Hooper was deputy town clerk to Ashton-under-Lyne, Lancs., borough council, and in 1949 was appointed to his present position.

Mr. William Albert Collins, deputy clerk to the justices of the Beacontree division, has been appointed clerk to the justices for the Billericay and Orsett divisions of the county of Essex, and takes up his duties on November 1 next. Mr. Collins was formerly with the clerk to the justices for the city of Bradford. Mr. Horace Reginald Godfrey, a principal assistant to the clerk to the justices of the Beacontree division, has been appointed deputy clerk to the justices for the Beacontree division to replace Mr. Collins.

Mr. K. G. Dyson has been promoted senior assistant prosecuting solicitor for Bradford, succeeding Mr. P. K. Watkins, whose appointment as senior assistant prosecuting solicitor for the Essex county council was reported at 118 J.P.N. 656. Mr. Watkins' appointment takes effect from November 1, 1954. The new assistant prosecuting solicitor for Bradford, taking the place of Mr. Dyson, is Mr. B. R. Thorpe, at present assistant solicitor to Brighouse, Yorks., borough council.

RETIREMENTS

Mr. J. H. Burch, clerk to Chilham, Kent, parish council for the last 47 years, is retiring.

OBITUARY

Mr. George Gordon Jeudwine, the clerk to the justices for the Sleaford, Lincs., petty sessional division, died on October 20, after a very short illness. Mr. Jeudwine was only 40 years of age, was admitted in 1936, and followed his father James Gordon Jeudwine in this appointment, in February, 1942.

SARTOR RESARTUS

In no sphere of life are the attitudes of men and women more sharply differentiated than in the matter of clothes. That tidiness of mind called reasoning, which is alleged (by the men) to be the prerogative of the male, is in popular parlance contrasted with female intuition—a masculine synonym, almost, for muddle-headedness ; the large, the all-embracing view of life, in which women (according to their own account) are specialists, they carefully distinguish from petty-minded precision and fussy attention to detail on the part of the men. Yet, however right (or wrong) they both may be in this, at the court of Queen Fashion their *rôles* are reversed. It is feminine support—the slavish adulation of sycophantic ladies-in-waiting—that keeps her firmly on her throne ; in masculine circles she is regarded as a tyrant, greedy, extravagant and grotesque. Themselves owing her no allegiance, the men regard the devotion of their women-folk, towards this capricious Ruler, at best with amused tolerance, at worst with bitter and rebellious contempt. For all they care, the Realm of Clothes might just as well be a republic, torn by misrule, anarchy and internecine feuds.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

When the Commons reassembled after the Summer Recess, Sir Thomas Moore (Ayr) tabled a Motion dealing with the sentences of magistrates' courts. It expresses grave concern "at the discrepancy in the sentences awarded by magistrates' courts throughout the country for offences of the same type and degree, and calls on the Government to take such steps as may be feasible to rectify the situation."

At question time, Mr. H. Hynd (Accrington) asked the Secretary of State for the Home Department whether he would introduce legislation to revise the scale of imprisonment in default of payment of fines in view of recent changes in the value of money.

The new Secretary of State for the Home Department, Major Lloyd George, replied that there was no fixed scale of imprisonment in default of payment of fines. The Criminal Justice Act, 1948, and the Magistrates' Courts Act, 1952, laid down maxima within which the courts had discretion to fix such terms of imprisonment in default of payment of fines as they considered appropriate in all the circumstances, and he was not satisfied that there was any case for amending legislation.

OBScene LITERATURE

Mr. K. Robinson (St. Pancras N.) asked the Secretary of State for the Home Department if he would introduce legislation to amend the law relating to obscenity in literature.

Major Lloyd George replied that it would be appreciated that that was not an easy matter on which to legislate, but he proposed to look into the problem as soon as possible.

Mr. Robinson then asked whether the Secretary of State was aware that there was widespread concern among the public about a law which permitted magistrates to order the destruction of Boccaccio's "Decameron", which had circulated freely for 600 years, which brought reputable publishers into disrepute, and allowed profiteers in pornography to escape scot free.

Major Lloyd George replied that on the whole, on that very difficult question, the law had operated fairly well, with occasional exceptions. There were one or two defects which certainly ought to be looked into and that was what he proposed to do as soon as possible.

Mr. Turner-Samuels : "Does not the Minister agree that the police are under a very great handicap in this work ? Is it not the case that before they can take any action at all they first have to buy a book which they suspect and then have to ask the magistrates for a search warrant ; and by the time they come to search the shop the objectionable books have disappeared ?"

Major Lloyd George : "I told the House that there were one or two defects in the law. That is probably one of them. There are, however, other aspects which concern authors and publishers as well, and that is why I think the matter should be looked into."

CAPITAL PUNISHMENT

In reply to Mr. C. L. Hale (Oldham W.), the Secretary of State said that the Government were not yet in a position to make any statement with regard to the recommendations made by the Royal Commission on Capital Punishment.

It was not always so. There are still those among us, in active life, who can remember the top-hatted, frock-coated business-men flocking to their daily work—not only the Forsytes of the older and younger generation, James and Timothy, Jolyon and Soames—but also their clerks and employees, neat and dapper in their City-suits, on thirty-five shillings a week. Farther back are the times our grandfathers remembered, when no one who was anybody at all would care to be seen without his wig ; when nearly all but labourers and manual workers wore knee-breeches, stockings and three-cornered hats, and the mark of a gentleman was the snuffbox, the ruffle and the gold-headed cane. And then, more remote still, there were those legendary times of the First Elizabeth, when courtiers, soldiers and scholars preened themselves like peacocks in their slashed doublets and silken hose, their starched ruffs, plumed caps and richly-ornamented shoes. Think of old Polonius, talking worldly wisdom to his son Laertes as he leaves Denmark to complete his education in the fashionable school of France :

"Costly thy habit as thy purse can buy,
But not express'd in fancy ; rich, not gaudy ;
For the apparel oft proclaims the man,
And they in France of the best rank and station
Are most select and generous, chief in that."

And now, in imagination, we must fly from Hamlet's Elsinore to modern Scarborough, where a speaker at the conference of the National Federation of Merchant Tailors has been deplored the disappearance of the Sunday-suit, the mode of the duffle-coat, blazer and corduroy-trousers, and "the cult of calculated scruffiness."

This eloquent plea for "the wearing of correct dress on all occasions" reads at first sight like a religious exhortation towards proper Sabbath observance :

"Children are being brought up not knowing what day of the week it is . . . I am looking for decently-dressed Englishmen on Sundays,"

proclaimed the speaker, fervently. It is perhaps a pity that he marred his peroration by the anticlimax :

"We want our business back!"

There can be no doubt that these strictures are justified on the facts; this is a sloppy age, and "the cult of calculated scruffiness" is not confined to the wearing of sports-clothes on inappropriate occasions. Flannel "bags" (how truly descriptive is the slang substitute for "trousers"!), open-necked shirts and nondescript "pullovers" are to be seen in the most unlikely places, and our grandfathers would turn in their graves if they could see the common degeneration of town-wear among the men. Ladies, on the whole, are more attentive to their appearance on formal and semi-formal occasions; but suburban shopping-queues are apt to contain a substantial proportion of strange figures—presumably female—wearing the hideously tight, drainpipe-like appendages now in vogue upon their nether limbs, underpinned by high-heeled shoes, and—supreme incongruity—topped by fur-coats that have seen better days. Viewed solely as a piece of architecture, the female form is seldom at its best in masculine moulding of any kind; but this mixture of styles reminds one of those monstrous edifices which Victorian industrial magnates used to build themselves—with severe Doric columns surmounted, not by a plain triangular pediment, but by Gothic towers and rococo ornamentation of the most extravagant kinds, and sometimes an oriental minaret for good measure.

It was in 1831, six years before Victoria came to the Throne, that Thomas Carlyle, the rugged Scot of Ecclefechan, wrote *Sartor Resartus*—a Philosophy of Clothes. His uncouth mode of self-expression in the English language, a "romantic" reaction from the elegant precision and logic of eighteenth-century and Regency writers, shocked and horrified his contemporaries who (like Queen Victoria at a later date) were not amused by his ponderous sense of humour, which owed so much to Teutonic models. One need not be a heretic, today, to confess to a hearty dislike of Carlyle's literary style; but to the devotees of Macaulay and Jane Austen it was positively revolting. Nevertheless, the "Theorem" of his fictitious German Professor Teufelsdröckh—"Society is founded upon Cloth"—and his teaching that, with mankind stripped of its clothes, "the whole fabric of Government, Legislation, Property, Police and Civilized Society" would dissolve, contains a germ of truth. "Lives the man" he exclaims "that can figure a naked Duke of Windlestraw addressing a naked House of Lords?" And again :

"Neither in tailoring nor in legislating does man proceed by mere Accident, but the hand is ever guided on by mysterious operations of the mind. In all his Modes and habitulatory endeavours an Architectural Idea will be found lurking : his Body and the Cloth are the site and materials whereon and whereby his beautiful edifice, of a Person, is to be built. Whether he flow gracefully out in folded mantles, based on light sandals ; tower up in high head-gear from amid peaks, spangles and bell-girdles ; swell out in starched

ruffs, buckram stuffings and monstrous tuberosities ; or girth himself into separate sections, and front the world an Agglomeration of four limbs—will depend on the nature of such Architectural Idea ; whether Grecian, Gothic, Later-Gothic or altogether Modern, and Parisian or Anglo-Dandiacal."

There is in literature, at any rate, one romantic figure who is an outstanding exception to these ideas—the central character in Hans Andersen's story of *The Emperor's New Clothes*. That story, beneath its fairy-tale charm, contains a profound and truthful allegory on the Tyranny of Fashion, to which Everyman should direct his wife's attention, next time her wits are in danger of distraction, and his pocket of denudation, by a "New Look" dress which is so up-to-date that it is nearly identical with the Old Look of ten seasons ago. Listen to Ecclesiastes on the subject :

"The thing that hath been, it is that which shall be ; and that which is done is that which shall be done ; and there is no new thing under the sun. Is there anything whereof it may be said, See, this is new? It hath been already of old time, which was before us . . . I have seen all the works that are done under the sun, and, behold, all is vanity and vexation of spirit. That which is crooked cannot be made straight ; and that which is wanting cannot be numbered."

Solomon, who had the advantage of considerable matrimonial experience, also warns husbands of the old, subtle technique :

"With her much fair speech she caused him to yield ; with the flattering of her lips she forced him.

He goeth after her straightway, as an ox goeth to the slaughter, or as a fool to the correction of the stocks."

Let all men harken to these words of wisdom, wear their oldest flannel "bags" and sports-jackets in comfort, and persuade their women-folk (*mutatis mutandis*) to do likewise, until sheer decency demands a renewal.

A.L.P.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, October 19

TOWN AND COUNTRY PLANNING BILL, read 2a.

HOUSE OF COMMONS

Friday, October 22

EXPIRING LAWS CONTINUANCE (No. 2) BILL, read 1a.
PESTS BILL, read 2a.

NOTICES

The next court of general quarter sessions for the city of Hereford will be held on Friday, November 19, 1954, at the Shirehall, Hereford, commencing at 10.30 a.m.

The next court of general quarter sessions for the borough of Shrewsbury, Salop, will be held on Wednesday, December 15, 1954, at the Shirehall, Shrewsbury, at 11 a.m.

The Michaelmas quarter sessions for the borough of Guildford, Surrey, which were adjourned on October 9, will resume for the purpose of hearing the appeal of Hector Frank Colebrook, on Saturday, November 6, 1954 at Municipal Offices, Upper High Street, Guildford, at 10.30 a.m.

IN THE TEMPLE OF MITHRAS

I fear that I distinctly saw
Some further books on Roman Law.

J.P.C.

THE HOUSING REPAIRS ACT

I simply can't judge the extent
By which they can increase the rent,
I can only hope and pray
That neither can they.

J.P.C.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Criminal Law—*Forgery—Intent to defraud.*

A certain cricket and football club is an unincorporated association having a membership of approximately 1,500 persons. The affairs of the club are managed by a general committee which in turn appoints sub-committees, one of which is known as the football committee. Two amateur football teams are administered playing in a well-known amateur league. The cricket and football club employs on a full-time basis a football team manager and a general secretary. It is the duty of the football team manager to pay to the amateur players of the football team each week the expenses incurred by them and which are permitted to be paid under the Football Association rules.

It would appear that certain of the players have in the past been paid expenses over and above those authorized by the Football Association, and further the individual players concerned have, of course, not signed any receipts for expenses which are in excess of those permitted by the Football Association rules. To ensure that the cricket and football club's accounts are balanced, it appears that the football manager, with the knowledge and approval of the general secretary, has been in the habit each week of forging individual receipts purporting to show that players have received sums of money by way of travelling expenses (rail and cab fares) and other incidental expenses and the details of such receipts, *prima facie*, are such that the amounts are allowable under the F.A. rules. Players' signatures have been forged by the manager. Evidence is available from certain players to the effect that the signatures are not theirs on these receipts and, further, certain players are prepared to say that they did not on several of the dates in question receive any money by way of expenses from the club.

What, in fact, has happened is that the total sum of money for a particular week amounting to, say, £25 has in fact been paid out amongst members of the team and certain members have received payments (e.g., for alleged loss of wages, etc.) not authorized by the Football Association. In the absence of receipts from the players for these amounts, recourse has been taken to the foregoing method to cover up and spread the total amount of these payments, which are in breach of F.A. rules, over all the members of the team and the details of the individual "receipts" are of course, as mentioned before, *prima facie* allowable by the Football Association.

The club's books have been audited and the players "receipts" have been checked and passed by the auditor.

May an opinion please be expressed as to whether proceedings can be instituted for an offence under s. 4 (1) of the Forgery Act, 1913, against the club manager and general secretary in respect of these forged receipts. It will be necessary to prove an intent to defraud and I am not clear, having regard to the judicial definition of "intent to defraud" in *Re London & Globe Finance Corporation* [1903] 1 Ch. 728 who, if anybody, has been defrauded.

SUPRO.

Answer.

In our opinion there is evidence upon which such a charge could be preferred. The intention alleged would be that of defrauding the association (that is to say, the members) by inducing them by means of false documents, to pay out of their funds, through their servants, sums of money which they had not authorized and would not have allowed to be paid but for these forgeries. There would also appear to be ground for preferring a charge of conspiracy to defraud against the general secretary and the team manager. It seems clear that if the facts are as alleged the funds have been drawn upon, and payment approved by reason of the fraud, and that these charges would lie. It might be worth considering also whether charges should be preferred of falsifying accounts.

2.—Guardianship of Infants—*Maintenance ordered in excess of maximum.*

I should appreciate your advice on the following:

In July of 1952 a wife applied for the custody of her two children under the Guardianship of Infants Acts and for maintenance. The justices made an order for custody and a maintenance order against the husband for £2 a week in respect of each child. It has become necessary to seek to enforce the order against the husband and has now been discovered for the first time that the order was made for an amount in excess of that which the justices had power to make, the maximum being, of course £1 10s. 0d. a week for each child. Your advice would be appreciated as to the procedure to be adopted to put the matter in order.

I might mention that the husband has only made three weekly payments under the order. It will also be appreciated if you will state, whether, although the order was made for an excess amount, it would be operative for the maximum of £1 10s. 0d. a week for each child.

STYX.

Answer.

The order is bad so far as it relates to the maintenance payments, and bad on the face of it. We think, therefore, it is unenforceable, and that not even £1 10s. 0d. a week can be claimed under it. The best course seems to be for the mother to apply for the variation of the order, when the amount can be corrected and the order can be enforced from the date of the variation.

3.—Insurance—*Robbery policy for employees.*

The rural district council have a policy insuring officers of the council against injury or death sustained through highway robbery while carrying council money from the council's offices to the bank. It is the invariable practice for the person taking the money to be escorted by another council employee. It occurs to me, however, that the council are in any case under no legal liability to their officers in the circumstances mentioned, and that, if that is so, not only is it improper for public money to be spent on this form of insurance, but also that if the council employee were injured or killed in the circumstances the council could not properly pay out any sums received under the policy. I should appreciate your opinion on these points.

CLYTEMNESTRA.

Answer.

Such insurance was certainly proper so long as the Workmen's Compensation Acts continued: *Nisbet v. Rayne* (1910) 103 L.T. 178. But the basis of that decision was that the murder of a man who carried his employer's money was an "accident." The employer is presumably not liable at common law, unless he has been negligent, and accordingly, since the Workmen's Compensation Acts have gone, the opinions in the query seem correct. At the same time, we hesitate to advise discontinuing the insurance, unless the district auditor queries the premiums. Suppose the second man were (improperly) diverted to another task by a superior official; this might be negligence, for which the council might be liable. If the council did receive a sum from the insurance company without being put to proof of liability, technical difficulty about handing it over to the victim or his executors could probably be overcome under the proviso to s. 228 (1) of the Local Government Act, 1933.

4.—Larceny—*Daffodils growing in wood.*

In this district there are many large country houses surrounded by woodland and extensive grounds where, in the spring, grow large numbers of daffodils. These flowers are described in some books as wild daffodils or Lent lilies, and in some cases it is said that the bulbs were planted by the owners of the properties many years ago to improve their woodland walks.

Every year complaints are received from some of the owners that gypsies have raided their grounds and picked all the flowers to sell in the towns. There has been no uprooting of the bulbs; only the flowers have been picked. I might add that these flowers are picked by the sackful and taken away in lorries.

It does occur to me that to take cases like this to a court purely on the grounds of trespass means nothing to the gypsies and is poor compensation to the owners. I should be obliged if you will let me have your views on the matter and any stated cases there might be with regard to the taking of these flowers.

SPARTAN.

Answer.

We do not think any offence of larceny can be charged, and it seems rather doubtful whether in the circumstances a charge of wilful damage would lie. Compare questions and answers at 96 J.P.N. 534, 632.

However, if the flowers are plucked in large numbers so that the plants are left with none, and especially if the owners of the land on which they grow have planted the plants, it might be worth while to bring a test case of malicious damage, see *Hamilton v. Bone*, (1888) 52 J.P. 726.

5.—Licensing—*Service of certain notices on police—New law substituting "chief officer of police" for "superintendent of police."*

Reference P.P. No. 6 on p. 301, ante, I shall be interested to know if you have considered the case of *R. v. Riley* (53 J.P. 452) as your answer does not appear to me to agree with the ruling in that case.

ODYSSEUS.

Answer.

In answering the Practical Point No. 6 on p. 301, *ante*, we did not overlook the decision in *R. v. Riley* (1889) 53 J.P. 452, and we do not think that our answer was in any way inconsistent with this decision.

In *Riley's* case a notice, intended for a superintendent of police, was left at a police station which the superintendent rarely visited and at which he had given no indication that he was prepared to accept service, no authority had been given to the person in charge of that police station to accept service on the superintendent's behalf, and, in fact, the notice did not come to the superintendent's knowledge within the prescribed time. On these facts, it was held that the service was bad.

We think, notwithstanding the decision in *Riley's* case, that a chief officer of police may hold himself out as being prepared to accept service of licensing notices at such police stations in his occupation as he thinks appropriate having regard to the nature of the application to which the notice relates: for instance, he may require notices of application for new licences to be served upon him at county police headquarters, but notices of application for occasional licences and "local" matters of such kind may be served upon him by delivering them to a subordinate officer at a local police station. The subordinate officer will then take such steps to act upon the notice as the chief officer will have directed.

Our main point is that the apparent difficulties created by the new requirement of the law may be overcome by police organization.

6.—Periodical Payments—Clerk as collecting officer, complainant—Attendance in court—Advising justices.

With reference to your answer to P.P. 6 at p. 615, have you not overlooked s. 74 (5) of the Magistrates' Courts Act, 1952?

*TANTALUS AGAIN.**Answer.*

We are much obliged to our learned correspondent, and we agree that s. 74 (5) meets the case where the attendance of the collecting officer would be a mere formality.

7.—Police—Statements made to—Whether defence entitled to copies.

In your issue of April 10, 1954 (118 J.P.N. 240), in answer to a query sent you by a correspondent, you stated that you knew of no authority for the proposition, that a defendant in a criminal case, or his solicitor, is entitled before trial to a copy of any statement already made in the case by the defendant to the police and that the defendant or his solicitor was not entitled to such copy.

I should like to know whether, before arriving at that opinion you considered the decision in *Mahadeo v. R.* [1936] 2 All E.R. 813 which seems to conflict with your view. In that case, as in your correspondent's, the solicitors for the accused had asked before trial for production of statements already made by the accused to the police. In *Mahadeo's* case, as in your correspondent's, this request was refused and, curiously enough, in both cases, the prosecution described the request as improper. In *Mahadeo's* case it was later decided that the request for production was quite proper and that the statements should have been produced.

*SENATA.**Answer.*

As we read it, the case referred to by our learned correspondent had reference to the production of certain statements at the trial. This is not the point of the present question, and we do not think the case throws light on it.

Another learned correspondent, to whom we are obliged, has suggested that our answer should be linked with a Note of the Week at 110 J.P.N. 436, in which it was stated that the practice was to grant copies of such statements, and that the Secretary of State had expressed approval, while adding that there must be exceptions. We adhere to our answer that there is no authority of which we are aware, for saying that the defence have a right to copies of statements such as were referred to in the question, it being a matter of discretion for the police. The fact that there may be a practice is not enough to establish a right.

8.—Road Traffic Acts—1934 Act, s. 33—Obligation to have licence in court at hearing of case—Requirement, on conviction, to produce licence—Time when suspension begins if licence not produced.

By subs. (3) a defendant is required when prosecuted for one or more of the offences referred to therein to send or bring his licence to the court so that it is available for production at the hearing. If he is convicted the court may require the licence to be produced to it.

By subs. (4): "If default is made in the production of a licence pursuant to a requirement under the last foregoing subsection the holder shall be guilty of an offence, and the licence shall be suspended from the time of the requirement until it is produced to the court."

A controversy has arisen here as to the meaning of the words "time of the requirement" in subs. (4), and your valued opinion on the matter would be welcomed.

On the one hand it is claimed that as from the date of the court's formal requirement that the licence be produced to it, such licence is suspended. The other side has it that the words mean that the licence should be produced by the time specified in a notice given to the defendant of the court's requirement, i.e., the time to be allowed for the production of the licence being possibly the five days specified in subs. (8) (2) of the Road Traffic Act, 1930. J. PULAU.

Answer.

The purpose of s. 33 (3) is to ensure that the licence is available in court and can be produced immediately on conviction if the court so requires. In our view the requirement is made when the court, on convicting the defendant, calls for the production of the licence which, by s. 33 (3), should be immediately available. The suspension runs from that moment until the time when the licence is actually produced to the court.

9.—Road Traffic—Motor Vehicles (Construction and Use) Regulations—Defective brakes and steering—Particulars of offence.

On June 18, 1954, X was charged with:

(1) On May 11, 1954, did use on a road at Hognorton, a motor vehicle, namely, motor lorry PIG 344, every part of every braking system and of the means of operation thereof not being maintained in good and efficient working order and properly adjusted at all times while the vehicle is used on a road. Contrary to regs. 75 and 101, Motor Vehicles (Construction and Use) Regulations, 1951.

(2) On May 11, 1954, did use on a road at Hognorton, a motor vehicle, namely, motor lorry PIG 344, the steering gear not being maintained in good and efficient working order at all times while the vehicle is used on a road. Contrary to regs. 75 and 101, Motor Vehicles (Construction and Use) Regulations, 1951.

The solicitor for the defendant objected to the summonses on the ground that they did not contain such particulars as were necessary for giving reasonable information of the nature of the alleged offences. In support of this objection, it was stated that the defendant has been supplied with form by a traffic examiner setting out several defects in both steering gear and in the braking system, but that these details were not disclosed in the summonses. The case of *Simmons v. Fowler* (1950) 48 L.G.R. 623 (discussed at 115 J.P. p. 332) was relied upon by the defence in their objection, and although the decision in this case related to an offence of using a motor vehicle with defective parts and accessories (reg. 72, Motor Vehicles (Construction and Use) Regulations, 1951), it was contended that the principle established in that case applied equally to the summonses now before the court.

The prosecution contended that the wording of the offences in the summonses, as contained in reg. 75, complied with the requirements of r. 77 of the Magistrates' Courts Rule, 1952, and were sufficient for giving reasonable information of the nature of the charges.

Your valued opinion and advice is sought on the following points:

(1) Whether the objection by the defence is sound, having regard to the particulars of the offences disclosed in the summonses.

(2) In view of the contention by the prosecution, and the fact that no offer has been made to provide better particulars of the offences alleged, should the justices now give the prosecution the opportunity to furnish such better particulars, or should they, if satisfied that the defendant's point is good, dismiss the summonses forthwith.

*JUSTINIAN.**Answer.*

(1) We think not. The case is distinguishable from *Simmonds v. Fowler*, *supra*, where no parts of the car were specified because in this case the summons shows that it relates to the brakes and the steering gear and not to the car and its accessories in general terms.

(2) Neither course seems indicated here, if our answer to (1) is correct.

10.—Road Traffic Acts—Pedestrian crossings—Illumination of globes—Requirement applies at all times, day or night.

I should be pleased to have your valued opinion on the following points, with reference to your article on the above, contained in 118 J.P. 290, and in particular to paras. 6 and 7, part II, sch. 1, which deals with the illumination of globes on pedestrian crossings.

I can find nothing in the regulations which states the hours the globes are to be illuminated. Have I overlooked a direction, or do the regulations mean that the failure of the required illumination during the day-time renders the provisions of the schedule inoperative?

JESTER.

The regulations require the globes to be illuminated at all hours of the day, and the proviso to reg. 7 (c) applies during the day-time as well as at night.

BOROUGH OF BROMLEY**Legal Assistant**

APPLICATIONS are invited for the appointment of Legal Assistant (Solicitor) at a salary in accordance with Grade A.P.T. Va (£650—£710) of the National Scales of Salaries, plus London Weighting (£20 p.a. to age 25, £30 at 26 and over).

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The successful candidate will be required to help and gain experience in the general legal work of the Department.

He will also be required to pass a medical examination and the appointment, which is to the established staff, will be terminable by one month's notice on either side.

Applications, endorsed "Legal Assistant," and stating age, qualifications and experience, and giving the names and addresses of two persons to whom reference may be made, must reach me not later than November 12.

Canvassing, directly or indirectly, will disqualify.

LIONEL KAYE,
Town Clerk.

Municipal Offices,
Bromley, Kent.
October, 1954.

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Canvassing either directly or indirectly will disqualify.

CYRIL E. C. R. PLATTEN,
Clerk of the Council.

Public Offices,
Enfield.
October 25, 1954.

COUNTY BOROUGH OF BOURNEMOUTH

ASSISTANT SOLICITOR (Established) required, salary within A.P.T. Grades VIII-IX £785—£960. Applications, with names of two referees, to reach me by November 20, 1954.

A. LINDSAY CLEGG,
Town Clerk.

CITY OF WORCESTER**Appointment of Chief Constable**

APPLICATIONS are invited for the above appointment at a salary of £1,200 × £50 to £1,350 together with a car allowance and other usual allowances.

The appointment is subject to the Police Regulations for the time being in force and to the passing of a medical examination. The successful candidate will be required to reside within the City and a house is available.

Applications, together with the names of three referees, must be endorsed "Chief Constable" and received by the undersigned by November 20, 1954.

BERTRAM WEBSTER,
Town Clerk.

Guildhall,
Worcester.

CITY OF BIRMINGHAM**Legal and Conveyancing Clerk**

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J. F. GREGG,
Town Clerk.

The Council House,
Birmingham, 1.

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COUNTY OF BERKS

Appointment of Male Probation Officer

THE Berkshire Probation Committee invite applications for the appointment of a male whole-time Probation Officer.

The appointment will be subject to the Probation Rules, 1949 to 1954. Applicants must not be less than 23 nor more than 40 years of age, except in the case of a serving whole-time Probation Officer. Applicants should state whether they have, or are able to drive, a car. The selected applicant will be required to pass a medical examination.

Forms of application can be obtained by sending a stamped and addressed envelope to the undersigned and must be returned not later than November 8, 1954.

E. R. DAVIES,
Secretary of the Berkshire Probation Committee.

Shire Hall,
Reading.

BOROUGH OF ROWLEY REGIS

Appointment of Town Clerk

APPLICATIONS are invited for the above appointment, at a salary commencing at £1,500 per annum.

The salary scale and conditions of service are in accordance with the Recommendations of the Joint Negotiating Committee for Town Clerks and District Council Clerks, and the appointment will be subject to three months' notice on either side.

The successful applicant will be required to pass a medical examination, and he will be expected to take up his duties on April 1, 1955.

Applications, giving the names of two persons to whom reference may be made, should reach me not later than Monday, November 8, 1954.

R. HEGAN,
Town Clerk.

Municipal Buildings,
Old Hill, Staffs.
October 23, 1954.

BOROUGH OF HIGH WYCOMBE

Appointment of Legal Assistant

APPLICATIONS are invited for the appointment of a Legal Assistant in my Department at a salary in accordance with the new Grade A.P.T. II (£560 x £20—£640). Applicants should have experience in conveyancing and general legal work. Local Government experience is desirable but not essential. Applications, giving particulars of age, qualifications and experience, and the names and addresses of two referees, should reach me by not later than November 9, 1954. Housing accommodation will be provided if required.

N. M. FOWLER,
Town Clerk.

Municipal Offices,
High Wycombe, Bucks.

COUNTY BOROUGH OF WEST HAM

Appointment of Whole-time Male Probation Officer

APPLICATIONS are invited for the appointment of a whole-time Male Probation Officer.

Applicants must not be less than 23 nor more than 40 years of age, except in the case of a serving probation officer.

The appointment will be subject to the Probation Rules, 1949 to 1954, and the salary will be according to the scale prescribed by those Rules.

The successful applicant will be required to pass a medical examination.

Applications, stating age, present position, qualifications and experience, together with not more than two recent testimonials, must reach the undersigned not later than Monday, November 15, 1954.

G. V. ADAMS,
Secretary of the Probation Committee.
West Ham Magistrates' Court,
West Ham Lane,
Stratford,
London, E.15.

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Form of application stating post for which applying, obtainable from me, must be returned by November 6, 1954.

R. H. JERMAN,
Town Clerk.

Municipal Buildings,
Wandsworth, S.W.18.

SHIPLEY URBAN DISTRICT COUNCIL

Appointment of Deputy Clerk and Solicitor

APPLICATIONS are invited from Solicitors for the above appointment within existing A.P.T. Grades VIII/IX (£785—£960 per annum), commencing according to qualifications and experience.

Applications, stating age, qualifications, experience and present and past appointments, together with the names and addresses of two referees, should reach the undersigned not later than November 15, 1954.

HOUSING ACCOMMODATION will be provided if required on a temporary basis.

ERNEST PEARS,
Clerk and Solicitor.

Town Hall, Shipley,
Yorkshire.
October 22, 1954.

EAST NORFOLK PROBATION AREA COMMITTEE

Appointment of Principal Probation Officer (Male)

APPLICATIONS are invited from experienced whole-time Probation Officers for the above appointment. Conditions of Service in accordance with the Probation Rules, 1949-1954. The salary for the appointment will be on the scale £850 p.a. rising by annual increments of £30 to a maximum of £970 p.a. Travelling and subsistence allowances payable. The successful candidate will be required to pass a medical examination.

Applications, stating age, qualifications and experience, and giving the names and addresses of three persons to whom reference can be made, must be in the hands of the undersigned not later than November 15, 1954.

H. OSWALD BROWN,
Secretary of the East Norfolk Probation Area Committee.

County Offices,
Thorpe Road,
Norwich.

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W. M. R. LEWIS,
Clerk of the Magistrates' Courts Committee.

The Guildhall,
Nottingham.

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Ludlow Petty Sessional Division

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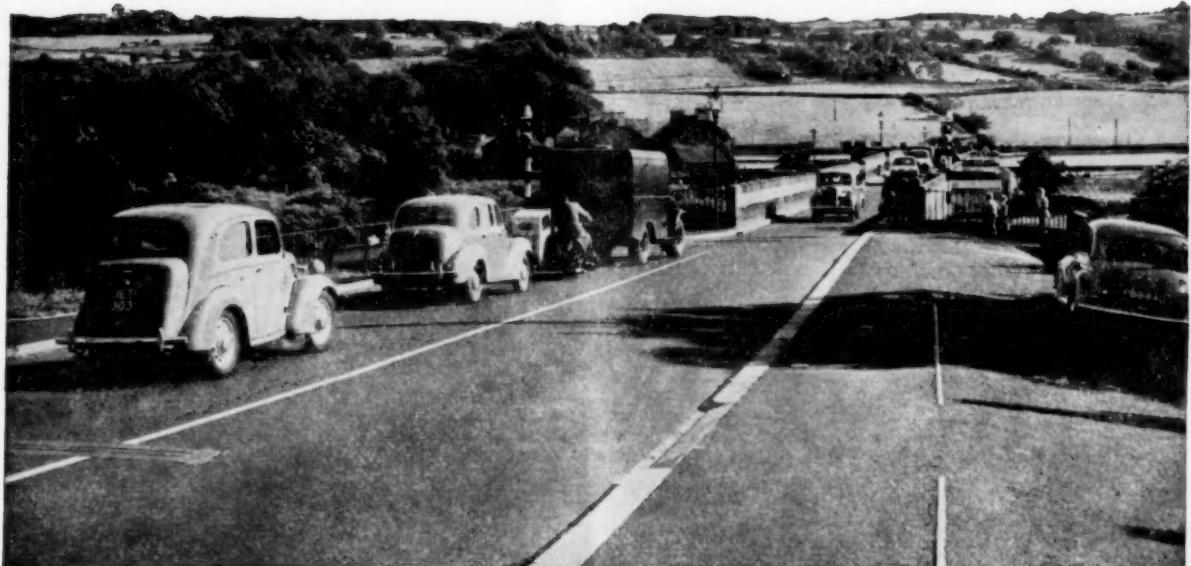
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